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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. NOR 42108

**THE SPRINGFIELD TERMINAL RAILWAY COMPANY
PETITION FOR DECLARATORY ORDER**

**ENTERED
Office of Proceedings**

NOV 05 2009

PETITIONER'S STATUS REPORT

**Part of
Public Record**

NOW COMES Petitioner, the Springfield Terminal Railway Company ("STRC"), by and through counsel, and provides the following status report regarding its ongoing collection activity pursuant to the Surface Transportation Board's October 28, 2009 Order:

The Board has requested a status report regarding any collection action that STRC has initiated within the applicable Statute of Limitations, to collect the unpaid charges at issue. On April 24, 2009, STRC filed a lawsuit against Fore River Warehousing and Storage, Inc. ("Fore River") in the United States District Court for the District of Maine. A copy of the Complaint is attached. The Federal Court has stayed the litigation pending a Decision by the Surface Transportation Board. The Federal Court has urged the parties to move expeditiously to complete the pending STB proceedings. Once the STB proceedings are completed, and assuming that the Board's Decision does not moot the issues before the Federal Court, the Federal Court had indicated that it will issue a Scheduling Order governing the future course of the pending litigation.

DATED at Saco, Maine this 5th day of November, 2009.

SMITH ELLIOTT SMITH & GARMEY,

BY: 

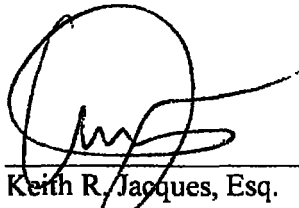
Keith R. Jacques, Esq.
Attorney for Petitioner
Springfield Terminal Railway Company

199 Main Street
P.O. Box 1179
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of Petitioner's Status Report on all parties of record in this proceeding, by furnishing a copy to Daniel L. Rosenthal, Attorney for Fore River, Verrill & Dana, One Portland Square, P.O. Box 586, Portland, ME 04112 via electronic mail this 5th day of November, 2009, per agreement of the parties to use electronic filing.

Dated: November 5, 2009



Keith R. Jacques, Esq.
Attorney for Petitioner
Springfield Terminal Railway Company

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

THE SPRINGFIELD TERMINAL)	
RAILWAY COMPANY,)	CIVIL ACTION NO.
)	
Plaintiff,)	
)	
v.)	COMPLAINT
)	
)	
FORE RIVER WAREHOUSING AND)	
STORAGE CO., INC.,)	
Defendant)	
)	

NOW COMES the Plaintiff, the Springfield Terminal Railway Company ("STRC"), by and through its undersigned counsel, Smith Elliott Smith & Garmey, P.A. and complains against Fore River Warehousing and Storage Co. Inc., ("Fore River"), as follows:

NATURE OF THE ACTION AND REQUESTED RELIEF

1. Plaintiff STRC, a rail carrier engaged in interstate commerce, has filed this action against defendant Fore River, the owner and operator of a warehouse to which the STRC provides rail service, seeking an award of damages against Fore River in the amount of at least \$114,960.00, representing amounts due the STRC for unpaid 2006 demurrage charges incurred by Fore River.

THE PARTIES

2. Plaintiff STRC is a Vermont corporation with its principal place of business located at 1700 Iron Horse Park, North Billerica, Massachusetts. STRC is an interstate rail carrier subject to the jurisdiction of the Surface Transportation Board.

3. Defendant Fore River is a Maine corporation with its principal place of business

located at 217 Read Street, Portland, Maine. Fore River is the owner and operator of a warehousing facility that is served by rail and located in Portland, Maine.

JURISDICTION AND VENUE

4. Under 28 U.S.C. 1331, this Court has proper jurisdiction over the subject matter of this action in that the action arises under the Interstate Commerce Act, Title 49, Subtitle IV, Part A of the United States Code. 49 U.S.C. § 10746.

5. This Court also has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because of the diversity of citizenship of the parties and the amount in controversy exceeds \$75,000.00.

6. Venue lies in this Court in accordance with 28 U.S.C. § 1391(b)(2) and District of Maine Local Rule 3(b) in that the cause of action arose in Portland, Cumberland County, Maine.

FACTUAL BACKGROUND

7. STRC incorporates herein by reference the allegations set forth above in paragraphs 1 through 6 as though fully set forth herein.

8. The subject matter of this action concerns demurrage charges assessed pursuant to 49 U.S.C. § 10746.

9. Demurrage is a daily rate that rail carriers charge a consignee for each railcar that the consignee fails to load or unload, within a specified period of time, after the railcar has been actually or constructively placed by the rail carrier at the consignee's disposal for loading or unloading.

10. Per 49 U.S.C. § 10746, "a rail carrier providing transportation subject to the jurisdiction of the Board under this part shall compute demurrage charges and, establish rules related to those charges, in a way that fulfills the national needs related to: (1) freight car use and

distribution; and (2) maintenance of an adequate supply of freight cars to be available for transportation of property.”

11. On September 1, 2005, the STRC implemented Freight Tariff ST 6004-A which superseded Freight Tariff ST 6004. Freight Tariff ST 6004-A provides updated terms and conditions pursuant to which all STRC served customers or consignees are required to pay demurrage and governs the manner in which the STRC assesses and computes demurrage charges. Freight Tariff ST 6004-A is attached and incorporated herein as Exhibit A.

12. Fore River is a consignee and/or shipper engaged in the business of shipping, receiving, loading and unloading railcars, certain of which were delivered and placed by the STRC and were subject to charges accruing under Freight Tariff ST 6004-A.

13. Per the terms of Freight Tariff ST 6004-A, Item Number 30, the STRC is required to provide consignees with notification when a railcar is delivered or placed for loading or unloading.

14. During the months of May, June, July and August of 2006, the STRC complied with Freight Tariff ST 6004-A, Item 30, in that it provided Fore River with appropriate notification of the delivery and placement of certain railcars that had been consigned to Fore River for unloading.

15. These proper notifications notwithstanding, during the months of May, June, July and August of 2006, Fore River incurred demurrage charges, in accordance with Freight Tariff ST 6004-A, due to its failure to conduct the timely unloading of railcars that had been consigned to it and delivered and placed for unloading by the STRC.

16. Thereafter, the STRC submitted demurrage calculation sheets to Fore River under a series of cover letters, dated June 8th, July 14th, August 4th and September 15th of 2006, each of

which informed Fore River of its total demurrage charges for the preceding month and requested that Fore River review the demurrage calculation sheets and contact the STRC immediately concerning any discrepancies. Each cover letter further provided that if the STRC did not hear from Fore River within ten (10) days of the date indicated on the cover letter that it would assume Fore River was in agreement with the demurrage calculations and issue a bill for said demurrage. The cover letters dated June 8th, July 14th, August 4th, and September 15th of 2006, and corresponding demurrage calculation sheets, are attached and incorporated herein as Exhibit B.

17. During the period of May 2006 through August 2006, Fore River informed the STRC that it would not pay the demurrage charges it had incurred during the months of May, June, July and August of 2006 and that said demurrage charges are invalid.

18. Fore River's refusal to pay properly assessed demurrage notwithstanding, the STRC forwarded invoice numbers S060600152, S060700252, S060900397 and S061000448 to Fore River, seeking an aggregate amount of \$114,960.00, for the demurrage charges incurred during the months of May, June, July and August of 2006. Invoice Numbers S060600152, S060700252, S060900397 and S061000448 are attached and incorporated herein as Exhibit C.

19. As of the date of this pleading, the total 2006 demurrage charges assessed to Fore River and owed to the STRC is \$114,960.00.

20. Demand was made upon Fore River to satisfy its outstanding obligation to remit payment to the STRC for the unpaid demurrage charges.

21. Despite the STRC's repeated attempts to collect the demurrage charges, Fore River has refused to remit payment for demurrage charges properly assessed in accordance with Freight Tariff ST 6004-A.

WHEREFORE, the Plaintiff, STRC, hereby prays for entry of judgment on its behalf against the Defendant, Fore River, ordering payment of \$114,960.00 for 2006 demurrage owed pursuant to 49 U.S.C.A. § 10746 and the applicable tariffs plus interest, costs, attorneys fees, and such further relief as the court may deem just and equitable.

DATED at Saco, Maine this 24th day of April, 2009.

/s/Keith R. Jacques, Esq.

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